

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10029 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAMMAD IDRISH @ DATTU

AYUBBHAI SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MR BM GUPTA for Petitioner

MR MR ANAND, GP with MS AMIBEN YAGNIK, AGP for
Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 29/01/97

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 31/8/1996 rendered by the respondent no. 1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. On going through the papers it appears that the petitioner has been facing two cases one of Shahibaug Police Station and another of D.C.B. Police Station under the provisions of sections 379, 114, 109 and sections 120(A), 120(B)(1) of the Indian Penal Code. Alongwith the present petitioner one Yunus Nurmohmad Vadnagarvala has also been a co-accused in both the aforesaid cases. Said Yunus Nurmohmad had filed Special Civil Application No. 9964 of 1996 against the detention order which he was facing. This Court (Coram : N.N. Mathur, J.) by its order dated 23/12/1996 applying the ratio in the case of Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta, C.P. reported in 1995 (2) G.L.R. 1268 directed the release of the said detenu by setting aside the order of detention. This Court had an occasion to peruse the material available on the record with the assistance of the learned counsel appearing on behalf of the respondents. This Court observed that few cases came to be registered against the said detenu and some statements which were recorded were quite general in nature and vague. Factually the case of the present petitioner almost run parallel to the case of the aforesaid detenu-Yunus Nurmohmad Vadnagarvala. Hence, when the aforesaid detenu-Yunus Nurmohmad Vadnagarvala in S.C.A. No. 9964/1996 came to be released by setting aside the detention order which he was facing, there is no reason why the present petitioner's case be considered on a different footing.

3. The distinction being one of law and order and maintenance of public order recognised in Mustakmiya's case (supra), this matter is also required to be considered in the light of that decision, which weighed with this Court in S.C.A. No. 9964/1996 as stated above. Following order is, therefore, passed :-

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Mohammad Idrish alias Dattu A. Shaikh shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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